How the White House Muffed Its Chances to Defeat the South on Jury Trial, See P. 2.

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For the Civil Rights Bill, Weak As It Is

We hope the House will accept and the President will sign the Civil Rights Bill as it is emerging from the Senate. Weak and watered down though it is, the measure could still be a powerful instrument in the long hard fight to win the Negro full emancipation. The debate in the Senate illuminated the weaknesses in the position of the North, the Negro and his friends. It showed that the country as a whole was little aroused on the issue, and had little understanding of its meaning. A campaign of public education is needed to let the whole country understand how the moneyed oligarchy of the South's black belt counties controls the State governments of the South and wields vastly disproportionate power in Congress. A campaign of public education is needed to teach the whole country how cruel the white South can be in dealing with the black, and how ingenious and protean are the devices it uses to nullify every effort to improve the black man's status. The six-man bipartisan Commission on Civil Rights the bill would establish could be the means of educating the country. It would give the Negro a national forum. This alone makes the bill worthwhile, and could lay the basis for stronger legislation later.

The Jury Trial Issue Was Crucial

The strength of the South's position in the Senate debate is that it succeeded in putting the North in the wrong morally and therefore (on so fundamental an issue) politically by taking its stand on the trial-by-jury issue. The issue was simple, though deceptively so; it invoked honored symbols and stirred deep conditioned reflexes. All the answers to it were ineffective because they were complicated. How explain the intricacies of equity and the technicalities of civil and criminal contempt to a vast lay audience, especially one that was only half listening? More important, the answers at least by implication attacked the fundamental myths of our society. To say that there were issues or occasions on which juries—twelve good men and true—could not be trusted was to say that the Common Man was faulty. In no political system do men dare disparage the sovereign or his symbols; in a democratic society, no campaign can be waged successfully that is unflattering to the ordinary voter. The Rousseauist views from which the streams of both democratic and socialist thought derive deifies the Common Man. If he seems mean, spiteful or ornery, it is a temporary aberration because something extraneous—civilization, or feudal oppression or capitalist exploitation—has sullied or deformed his shining essential self. To say out loud that a plain ordinary run-of-the-mill Southern white man couldn't be trusted to deal justly with a Negro was in the final analysis to condemn ordinary people everywhere.

The Irrepressible Conflict Again

To say that the jury, chosen at random, tends to reflect the dominant views of the community and cannot rise above them was to admit that we were confronted by two distinct communities in one nation, a white Northern community prepared to concede Negro equality in theory and to accept it without too much protest in practice, and a white Southern community determined to treat the Negro as an inferior in race and status, and to circumvent every effort to enforce equality. So regarded, the problem was whether the Northern majority was to coerce the Southern majority or back down before it; the irrepressible conflict rose to the surface again. Yet to face this fully was to abandon the creative fictions with which men have sought for centuries to subdue, mold and civilize the savage within them. What happens to human brotherhood, what happens to the common Godhead, what happens to the solidarity of labor and the mission of the proletariat if we allow ourselves to look too nakedly at a situation which is race against race, with one determined to keep its foot on the neck of the other? If white workers and white tenant farmers in the South prefer to stand with their white overlords and rulers rather than with the black workers and black tenant farmers who share their economic lot, what happens to the assumptions that men act rationally, that they are basically benevolent, that they see their own real interests and act upon them, that they are perfectible and movable in progressive direction because of their economic interests, and that these interests are part of a Cosmic Plan, the old divinity disguised as Historical Materialism or Progress?

The View from Below Was Clearer

These Hamlet feelings did not bother the Negro because looked at from below, his painful vantage point, the whole argument was a white man's fraud. The realities of oppression were too overwhelming for such figments to be ponderable. To the Negro the question was simply whether he was or was not to be treated as a first class citizen. But to the white man, the good liberal white man of the North, the indispensable ally in the Negro's struggle, the question was whether he was going to be "fair." He did not like to face up to the question of whether one could be fair to the oppressor without being unfair to the oppressed. Indeed can one be fair to the oppressed without some unfairness to the oppressor? This is how the question honestly presents itself in a revolutionary period and the effort to win equality for the Negro in the South is a revolutionary enterprise. But to admit this would be to abandon the hope of coaxing and jollying the South along into obeying at last what it had resisted for 90

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The Joker in The Amendment Giving Negroes "The Right To Be A Juror"

How the White House Muffed Its Chances to Defeat the South on Jury Trial

The President did not come to life on the civil rights issue until the fight was over, and political capital could be made by attacking the bill.

The White House is a press agent's dream. It can put a subject on the front page of every newspaper in the world. The outcome on civil rights might have been different if Eisenhower and his aides had used this power for public education.

An example: On July 24, in discussing the vote frauds in certain Louisiana parishes where the White Citizens Councils purged the rolls of Negro voters, Senator O'Mahoney, chief sponsor of jury trial in civil rights cases, laid himself open to devastating retort. O'Mahoney said it would have been "perfectly simple" for the Attorney General under existing law to indict those responsible for criminal conspiracy.

The Jury Wasn't Interested

The fact is that the Attorney General sought just such an indictment. But the Federal grand jury in Louisiana not only declined to indict but in the Bienville and Jackson Parish cases "after the evidence developed by the FBI had been outlined" to the jury it "expressed itself as not wishing to have any of the witnesses called as there was no real possibility of any indictments being returned." The words are from a letter by Assistant Attorney General Warren Olney III put into the Congressional Record by Senator Douglas just before the final vote on August 1 (see pps. 12156-7) where it went almost unnoticed. How effectively the White House might have used that letter against O'Mahoney if it had wanted to! A jury which would not even hear the witnesses! This little publicized affair could have been used to dramatize for the whole country the untrustworthiness of Southern juries where Negro rights are involved.

Another example: On July 26, Senator Case of New Jersey put into the Congressional Record (at pages 11645-7) a series of documents supplied by Warren Olney on the refusal of both State and Federal grand juries in Mississippi to indict for the brutal mistreatment of prisoners in Hinds County Jail, Jackson, Miss. One of those mistreated was a white sailor. The FBI investigated; a total of 56 witnesses was found; they were brought before a U. S. grand jury in Jackson, Mississippi, from June 4 to June 13 of this year. No indictments were returned.

Senator Case had photographs of two victims which he offered to show his colleagues. The documents and the photos elicited no reaction whatsoever. The White House could have rallied public sympathy and understanding by using this material. Jim Hagerty is no novice at using the press. The documents would have brought sharply home not only the unreliability of Southern juries but the need for Part III, which would have given the Attorney General the right to use the injunctive process to stop future brutality of this kind.

Explaining That Kasper Jury

"The conviction is understandable. First, the trial took place in Knoxville, which happens to be a hotbed of Republicans and always has been, even back in the days of the war between the States. Second, Tennessee happens to be the State that elected Estes Kefauver, traitor to the South, to a seat in the U. S. Senate. Third, Tennessee sentiment is not Southern sentiment and we can thank God for that."

—Jackson, Miss., News, P. 12145 Con. Rec. Aug. 1.

That New "Right to Serve on Juries"

Another example. The tide was finally turned in the South's favor on jury trial by the Church amendment which struck out of existing law the provision (it originated in the GOP dominated 80th Congress) that no one could be a Federal juror who was not qualified to be a State juror. This automatically barred most Negroes in the South. Senator Church (D., Wyo.) claimed that his amendment to the O'Mahoney jury trial amendment would confer on the Negro "another civil right—the right to serve as a juror." On this basis he obtained as co-sponsors four other Western Democrats, Magnuson, Jackson, Murray and Mansfield, and three Northern Democrats, Kennedy, Pastore, and Lausche. These seven alone were more than enough for victory, since a shift of five was enough to decide the issue.

But more important than the provision repealed by the Church amendment is the way Federal jury panels are made up in the South. They are drawn from lists furnished by so-called "key" business and political leaders and they include only a few token "trustworthy" Negroes. Douglas said that "without an affirmative change in the practice of selecting juries . . . the likelihood is that few Negroes will actually be called to serve." That explanation, based on the authoritative study by a respected senior Federal Judge some years ago, could also have been made effective politics by the White House, if anybody there had cared enough to use it.

Doesn't John L. Lewis Read the United Mine Workers Journal?

"The United Mine Workers of America . . . support appropriate legislation looking to the full enjoyment by all citizens of all civil rights. . . . Equally important, however . . . is the right of all men to be tried by a jury. . . . We should not and need not endanger one civil right in an effort to guard and secure another. . . . Expanding power of a central government . . . is allowable only when contemporaneous safeguards are provided for protection of all citizens alike in all parts of the country. . . ."

—John L. Lewis telegram on behalf of the United Mine Workers to various Senators backing jury trial in the civil rights bill, p. 11880, Con. Rec. July 31.

"Civil rights legislation was the big issue of debate . . . as the Journal went to press. As usual, the Dixiecrats were, in effect, fighting the Civil War all over again . . . and trying to tack on all sorts of hog-tying amendments that would make the legislation ineffective. The major amendment . . . was one that would allow jury trials of anyone accused of contempt. . . . It is obvious that no southern white jury will convict anyone on such charges. . . . The trial-by-jury amendment is as phony as a $3 bill. . . . The civil rights bill actually is a mild measure. . . ."

—Editorial, United Mine Workers Journal, June 1957 issue, Text at P. 11905, Con. Rec. July 31.

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How the South Protected Its Friends from A Witch Hunt in Reverse

Civil Rights Will Depend on the Men Eisenhower and Brownell Pick

If the Civil Rights Bill becomes law, much will depend on the President and the Attorney General—the six men they pick for the Civil Rights Commission, the kind of man they choose to be the new Assistant Attorney General on Civil Rights, the speed with which they set up a Civil Rights Division in the Department of Justice, and the militancy with which they initiate action under existing law and the new bill. Unfortunately militancy is not the outstanding characteristic either of Mr. Eisenhower or Mr. Brownell.

In its progress through the House and Senate, the civil rights bill was steadily crippled. It emerged heart-breakingly weak. Even the investigating powers of the new Civil Rights Commission were sharply limited. As far back as the proceedings in the House Judiciary Committee, changes were made which will make it hard to put the spotlight on the worst of the South's white supremacists.

Protecting Their Own

From Dies to Eastland, Southern reactionaries have shown themselves adept in using the public pillory for suspected radicals. They have proven equally adept in protecting their own friends from exposure. A provision of the bill says that if the Commission "determines that evidence or testimony at any hearing may tend to defame, degrade or incriminate any person" it shall be heard in executive session. The bill makes it a crime to disclose such evidence without the consent of the Commission.

A newspaperman (if this provision is constitutional) could be sent to jail for one year and fined $1,000 for disclosing some particularly sensational bit of chicanery or fraud revealed before the Commission. By contrast, the heaviest penalty which could be assessed by a judge for criminal contempt of a civil rights order would be six months in jail and $1,000 fine.

The Perjury Hazard

The Commission can only investigate "allegations in writing under oath or affirmation." There are many parts of the South where Negroes may fear prosecution for perjury if they dare take their complaints to the Commission on sworn affidavit.

The only allegations the Commission can investigate have to do with voting rights. In House committee the Southerners protected the White Citizens Councils by taking out of the bill authority to investigate allegations of economic pressure brought on persons because of their race or color.

On other than voting rights, the Commission can only study "the laws and policies of the Federal government with respect to equal protection of the laws" and "legal developments constituting a denial of equal protection." This means it can go only indirectly into the many unofficial ways the South deprives Negroes of their rights.

Brownell No Galahad

"One wonders at the vigor of the opposition. If the Attorney General of the United States is as dilatory and negligent in protecting these civil rights during the second Eisenhower Administration as he was during the first, the cause of freedom will not have advanced very much, if any, by January 1961. . . . Our trouble is not with an Attorney General mounted on a white charger intent on the conquest of injustice, but rather a reluctant politician moving gradually to deal with the periphery of a serious social, economic and legal problem only because political expediency requires the party he represents to do something about it before the next national election."

—Senator Clark (D. Pa.) on the Civil Rights bill, July 19.

Pressure on the White House

Among amendments which were beaten down on the Senate floor were several which would have further crippled the bill. One (by Kefauver) would have made the proposed Commission a legislative instead of executive agency, thus laying it open to constant interference from the Southern bloc in Congress.

Another would have taken from the Attorney General the power given him by the bill to initiate injunctions on his own initiative; this is important in those areas where Negroes are too terrorized to dare authorize action on their own behalf.

Another provision saved was that which empowers the Federal courts to intervene in civil rights cases "without regard to whether the party aggrieved shall have exhausted any administrative or other remedies." This prevents relief from being blocked by run-around in State courts and agencies.

For all its weaknesses, the bill gives the Department of Justice a little more power than it had before to protect Negro rights and it provides an investigating Commission which can do a great deal despite the heavy limitations upon it. Everything depends on the men in charge, and the support they get. *This in turn will require constant pressure on the White House.*

Russell Misstates the Facts in An Attack on the Supreme Court

"I have never failed," Russell assured O'Mahoney in the Senate July 30, "to see Negroes on panels in the Federal courts of my State." Javits thereupon cited Reece v. Georgia in which the Supreme Court as recently as December 5, 1955, reversed the conviction of a Negro for murder in Georgia on the ground that Negroes were "systematically excluded" from the grand jury which indicted him.

Russell indignantly replied that this ruling was made "without a scintilla of evidence." He said the FBI investigated and found Negroes on both grand and petit juries in Cobb County, Georgia, where Reece was tried. Russell was given unanimous consent later to insert in the Record a Justice Department statement showing—so Russell said—that the Court's finding was "simply picked out of thin air."

But the statement, when it turned up in the Record (July 30, p. 11770), revealed that Russell has misinformed the Senate. It said the evidence before the Court showed no Negro had served on a Cobb County grand jury for 18 years at the time Reece was indicted on October 23, 1955. But the grand jury list was revised in August, 1954 i. e. after the Reece appeal began, and since then juries had been chosen "without unlawful discrimination."

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Only the Right to Vote Can Provide As Potent A Symbol as Jury Trial

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years—equal status for the Negro. It was hard to maintain this hope and at the same time argue that you couldn't even trust a jury of Southern white men within the inhibiting confines of a court of law.

As Potent A Symbol for Counter Attack

I stress all this because the outcome in the Senate, which depended on the votes of liberal Democrats from the West and North is not simply to be explained as the reflection of a deal on Hell's Canyon or cynical maneuvering for Southern support in obtaining the 1960 nomination. Such deals and maneuvers are themselves limited by what is morally acceptable and therefore politically feasible. It was only on so respectable an issue as jury trial that such men as Kennedy would dare join the South; it was only on so potent an issue that such liberals as O'Mahoney could be won. To look at this picture clearly is to see what the Negro needs, and what we all need in the fight to make civil rights a reality, and to break the power of the Southern oligarchy, a group which would plunge this country into Fascism if need be to maintain its undemocratic power. This is to turn the tables on the South, to put it in the wrong, to wage counter attack with a symbol and slogan as powerful as jury trial. The slogan to match it in our society is the right to vote. The first is to use the expanded enforcement machinery—the new Civil Rights Division of the Department of Justice and the enlarged powers of proceeding by injunction—to test the good faith of the South and the juries on whom it asks us to rely. The best answer to the jury trial issue is to use the bill to put as many voting right cases as possible before Southern juries, and let the whole country see whether or not they can be trusted. The second is to use the new Commission on Civil Rights to let the whole country see how undemocratic the South's political system really is.

What They Dare Not Say Openly

To invoke the right to vote as the South has invoked the right to jury trial would be to throw its ruling class on the defensive. The truth is that the Southern oligarchy does not believe in a right to vote; it is fundamentally Whig. The Southern oligarchy believes, as did Alexander Hamilton, that government should be by "the rich and well born," operating through a restricted property franchise. The one party system of the South, with its multitudinous qualifications and restrictions on the right to vote, disfranchises and discourages white men as well as black. This is how the Byrds, Russells and Eastlands operate. But they dare not say so publicly. They cannot openly attack the democratic idea. They cannot say they do not believe in the right to vote without exposing their real position to the white majority of the South whom they and their kind have befuddled and led by the nose for generations. To take this bill, to turn the Commission into a national forum, to initiate as many legal actions as possible, would be to put the Southern oligarchy morally and politically in the wrong and in an ultimately indefensible position. Wherever Southern juries do their duty (as some will) progress will be made; where they refuse, the South will hurt itself. The North, the Negro, and the friends of justice, can use this bill to regain the offensive, not just in Washington but within the South. That is why we hope to see it signed and used.

The Southern Oligarchy's Real View

"Between September 1957 and May 1958 any South Carolinian who wants to vote in the primaries next June will have to obtain a new voting registration certificate. . . . Representative James P. Harrelson of Colleton County has charged that the measure 'is designed to disfranchise masses of working people.' He maintained that 'laboring people won't have the opportunity to fill out new application blanks and stand in long lines, waiting to be registered.'

"We say that any South Carolinian who hasn't the patience to stand in line to obtain a registration certificate, isn't fit to vote. . . . Let's not imagine that registration of all South Carolinians is desirable. . . . Every effort should be made from September to May to urge all able, intelligent, responsible, property-owning South Carolinians to register. Those who have only limited education or who might be herded to the polls should not be encouraged."

—Charleston (S. C.) News and Courier, June 24, 1957 reprinted Con. Rec. Aug. 1, p. 12170.

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